Supreme Court, U.S.
FILED
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No. _____

In the Supreme Court of the United States

DR. KISHAN K. KHANNA, PH.D.,
Petitioner,

v.

JEMM COMPANY; MAHESH PATEL,
Vice President of Jemm Company,
Respondents.

On Petition for a Writ of Certiorari to the Supreme Court of the State of Colorado

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PETITION FOR WRIT OF CERTIORARI

DR. KISHAN K. KHANNA, PH.D.
Petitioner pro se

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QUESTIONS PRESENTED

(1) Due Process

Whether non- compliance by the Trial Court with the Rewritten and published rules which were admittedly revised extensively and rewritten in 1999 based on the corresponding Federal Rules of Civil Procedure, and Federal Rules of Evidence, so as to make the trials conducted by the courts free, fair and impartial, constituted denial of procedural due process by the Trial Court to the Petitioner appearing as Plaintiff pro se.

(2) Equal Protection

Whether, non- compliance by the Trial Court with the mandatory provisions of the Rewritten and published Colorado Rules of Civil Procedure and Colorado Rules of Evidence when the Trial Court and other courts followed these mandatory provisions of the rules in other cases, did not constitute denial of equal protection of laws to the Petitioner, discriminating against the Petitioner on the basis of race, color, origin or such other considerations.

PARTIES TO THE PROCEEDING

Petitioner
Dr. Kishan K. Khanna, Ph. D.

Respondents
Jemm Company,
Mahesh Patel

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(iii) Order of the Trial Court in Case No. 01 CV 5606 dated 26th Sept. 2002 issuing a protective order in favor of Defendants not to answer approving that interrogatories and make admissions

(iv) Order of the Trial Court in Case No.01 CV 5606 dated 8th Nov. 2002, nunc pro tunc 22nd October 2002

(v) Order of the Colorado Court of Appeals in Case No.02 CA 2031 affirming the Trial Court judgment

(vi) Order of the Colorado Court of Appeals in Case No. 02CA 2031 dated 13th January 2005 denying rehearing

(vii) Order of the Supreme Court of Colorado in Writ Petition No. 05S C 104 dated April 25, 2005 denying a writ of certiorari.

BASIS OF JURISDICTION

1. This Petition is filed under Sections 1983 and 1981 of Title 42 against deprivation of property of the Petitioner without due process and denial of equal protection of laws by the Denver City and County District Court acting under the color of state law.

2. This Court has jurisdiction under Sections 1981 and 1983 of Title 42, to review the order of the Supreme Court of the State of Colorado dated 25th April 2005, denying a writ of certiorari. A copy of the order of the Supreme Court under review is annexed as Apx. A, 1a .This Petition has been filed within 90 days of the order of the Supreme Court of the State of Colorado .

3. The Petition for a writ of certiorari before the Supreme Court of Colorado was timely filed against the order of the Court o Appeals, denying petition for rehearing on 13th January 2005 , copy annexed as Apx. B, 3a.

4. The Petition for rehearing had been timely filed against the order of the Court of Appeals affirming the order and judgment of the Trial Court dated 8th Nov. 2002, nunc pro tunc 22nd October 2002.

5. The Trial Court order dated 22nd October 2002 decreed a sum of $22,000 against the Plaintiff in his suit for recovery against the Defendants a sum of $ 23,000.00 as balance technical expert fee, thus depriving the Petitioner/ Plaintiff of property in excess $45,000 and also making him liable as an alleged fraudulent person etc. causing further loss of property rights. This makes the Petition maintainable under Section 1983 of Title 42.

6. The Petitioner relies on *Zinermon v. Burch* 110 S. Ct., 975 at 982-983:

> *"In Monroe, the this Court rejected the view that Section 1983 applies only to violations of Constitutional rights that are authorized by state law, and does not reach abuses of state authority that are forbidden by the State's statutes or Constitution or are*

torts under the State's common law. It explained that Section1983 was intended not only to "override" discriminatory or otherwise unconstitutional state laws and provide a remedy for violation of civil rights "where state law was inadequate", but also to provide a federal remedy "where the state remedy, though adequate in theory was not available in practice." 365 U.S, at 173-174 , 81 S. Ct., at 467-77.

"It is no answer that the State has a law which if enforced would give relief. The federal remedy is supplementary to the state remedy, and the later need not be first sought and refused before the federal one is invoked. Id., 183, 81 S. Ct., at 481.

A Plaintiff, for example may bring a Section 1983 action for an unlawful search and seizure despite the fact that the search and seizure violated the State's Constitution or statutes, and despite the fact that there are common law remedies for trespass and conversion."

7. The Petitioner further relies on the *Cleveland Bd. Of Educ. v. Loudermill*, 105 S. Ct., 1487 at 1493:

"As relating to due process clause, provision that substantive rights of life, liberty and property cannot be deprived except pursuant to constitutionally adequate procedures, categories of substance and procedures are distinct; once it is determined that the due process clause applies, question remains what process is due. USCA Const. Amend 5,14.

An essential principle of due process is that a deprivation of life, liberty or property be preceded by

notices and opportunity for hearing appropriate to the nature of the case. USCA Const. Amend, 5, 14.

8. The Petitioner relies on the following judgments of the US District Courts for guidance in the matter of filing this petition for a writ of certiorari before this Court.

(i) *Henniger v. Pinellas County*, 7 F. Supp. 2d 1334.

(a) Violation of procedural due process may provide foundation for Section 1983 claim USCA Const. Amend 14; 42 USCA Section 1983.

(b) Only when the procedural remedies are denied does the constitutional violation of due process become ripe under Section 1983. USCA Cons. Amend. 14 ; 42 USCA Section 1983.

(c) Violation of procedural due process occurs only when state refuses to make available means to remedy deprivation. USCA Const. Amend 14.

(ii) *Wallace v. Bd. Of Regents of University Sys. Of GA*, 967 F. Supp. 1287 (S.D. Gs. 1997)

For claim to succeed under Section 1983, plaintiff must show that person acting under color of state law deprived him of federal or constitutional right. 42 USCA Section 1983.

Allegation of violation of procedural due process rights under Fourteenth Amendment states claim under Section 1983. USCA Const. Amend. 14; 42 USCA Section 1983.